

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL JENNINGS,  
Plaintiff,

v.

**Hon. Hugh B. Scott**

03CV948A

**Order**

L. MULEN, M.D., et al.,  
Defendants.

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Plaintiff in this action has applied to the Court for appointment of counsel pursuant to 28 U.S.C. § 1915(e) (Docket No. 37). Defense counsel has written requesting an extension of time to submit dispositive motions, to September 29, 2006 (letter to Chambers, Aug. 1, 2006).

*Plaintiff's Motion to Appoint Counsel*

Under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23 (2d Cir. 1988). Assignment of counsel in this matter is clearly within the judge's discretion. See In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1986). The factors to be considered in deciding whether or not to assign counsel are set forth by the Second Circuit in Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). Counsel may be appointed in cases filed by indigent plaintiffs where it appears that such counsel will provide substantial assistance in developing petitioner's arguments, the appointment will otherwise serve the interests of justice, and where the litigant has made "a threshold showing of some likelihood of merit." Cooper v. A. Sargenti Co., 877 F.2d 170, 174 (2d Cir. 1989).

The Court has reviewed the facts presented herein in light of the factors required by law. Based on this review, plaintiff's motion for appointment of counsel is **DENIED WITHOUT PREJUDICE AT THIS TIME**.

It remains the plaintiff's responsibility to retain his own attorney or to press forward with his lawsuit pro se. 28 U.S.C. § 1654.

*Defendants' Request for Extension of Time*

Under the current Scheduling Order (Docket No. 29), dispositive motions were due by August 1, 2006. At a conference on June 20, 2006 (Docket No. 35), defense counsel indicated that she might seek an extension of this deadline. Defendants' request is **granted**; dispositive motions are now due on **September 29, 2006**, and pretrial statements (formerly due on that date) are now due by **December 1, 2006**, if no motions are made.

So Ordered.

/s/ Hugh B. Scott  
Hon. Hugh B. Scott  
United States Magistrate Judge

Dated: Buffalo, New York  
August 2, 2006